

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANNETTE TURNER,	§
	§ No. 561, 2011
Employee/Appellant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware, in and
	§ for New Castle County
JOHNSON CONTROLS,	§ C.A. No. N10A-12-002
	§
Employer/Appellee Below-	§
Appellee.	§

Submitted: April 6, 2012  
Decided: April 20, 2012

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 20<sup>th</sup> day of April 2012, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The appellant, Annette Turner, filed an appeal from the Superior Court’s September 26, 2011 order affirming the November 12, 2010 decision of the Industrial Accident Board (the “Board”), which denied Turner’s petition for worker’s compensation benefits. We find no merit to the appeal. Accordingly, we affirm.

(2) The record reflects that Turner worked for Johnson Controls from June 2000 through September 2008. Turner worked at a machine that produced lead batteries. In October 2000, she complained of chest pain and

congestion and her primary care physician, Dr. Andrew Ferguson, diagnosed her with bronchitis. In 2004, Turner again suffered a bout of chest pain and congestion and was hospitalized. Ultimately, she was prescribed an Albuterol inhaler. In September 2008, Turner, complaining of chest congestion, cough and blood-tinged sputum, saw Dr. Ferguson, who diagnosed her with bronchitis and reactive airway disease. Dr. Ferguson referred her to a pulmonologist, Dr. Maheshwari, who also diagnosed reactive airway disease. On instructions from her physicians, Turner did not return to work at Johnson Controls.

(3) On September 1, 2009, Turner filed a Petition to Determine Compensation Due claiming total disability benefits for the period September 10, 2008 through December 17, 2008. The claim Turner presented to the Board was that her job aggravated her pre-existing medical conditions by exposing her to “toxic fumes.” Throughout the course of this litigation, the parties have disputed which standard should be applied to Turner’s claim. Turner argues in favor of a “but for” standard of causation,<sup>1</sup>

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<sup>1</sup> *Reese v. Home Budget Center*, 619 A.2d 907, 910 (Del. 1992) (“[a] preexisting disease or infirmity, whether overt or latent, does not disqualify a claim for worker’s compensation if the employment aggravated, accelerated, or in combination with the infirmity produced the disability.”)

whereas Johnson Controls argues that the occupational disease standard governs.<sup>2</sup>

(4) We have carefully reviewed the record in this case, including the transcript of the Board hearing as well as the various submissions of the parties and the written decisions of the Board and the Superior Court. While the Board determined that the *Anderson* standard governed Turner's petition for benefits, and the Superior Court agreed, we do not find it necessary to decide the correctness of that determination in this appeal. We conclude that, under either the standard enunciated in *Reese* or the standard enunciated in *Anderson*, Turner failed to carry her burden of proof on the issue of her entitlement to benefits, for the following reasons.

(5) Under Delaware worker's compensation law, the claimant bears the ultimate burden of proof to establish that his or her injury is work-related.<sup>3</sup> This Court has held that an employer can successfully defend a petition for worker's compensation benefits by merely rebutting the claimant's allegation that the injury is work-related.<sup>4</sup> The employer need not

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<sup>2</sup> *Anderson v. General Motors Corp.*, 442 A.2d 1359, 1360-61 (Del. 1982) ("for an ailment to be found to be a compensable occupational disease, evidence is required that the employer's working conditions produced the ailment as a natural incident of the employee's occupation. . . .")

<sup>3</sup> *Hoffecker v. Lexus of Wilmington*, Del. Supr., No. 523, 2011, Ridgely, J. (Feb. 1, 2012) (citing *Strawbridge & Clothier v. Campbell*, 492 A.2d 853, 854 (Del. 1985)).

<sup>4</sup> *Id.*

establish an alternative theory of causation for the injury.<sup>5</sup> Moreover, in order to prove the necessary causal link between the claimant's injury and his or her employment, the claimant must provide medical testimony establishing causation "within a reasonable degree of medical probability."<sup>6</sup>

(6) We have carefully reviewed the testimony of Dr. Ferguson, Turner's primary care physician, upon whose opinion Turner relies for her claim that her employment at Johnson Controls caused an exacerbation of her pre-existing medical condition. Dr. Ferguson testified that "[Turner's] occupational exposure may have exacerbated her breathing status." He also testified, responding to a question about what "fumes" Turner was exposed to at Johnson Controls, that, "[t]hat was never relevant in my treatment [of] Ms. Turner" and "that is out of my realm of expertise." Finally, in answer to a question about whether Turner's symptoms were work-related, Dr. Ferguson stated, "They may have been."

(7) We review a decision of the Board in order to determine whether substantial evidence exists to support the Board's findings of fact and conclusions of law.<sup>7</sup> "Substantial evidence" consists of such relevant evidence as a reasonable mind might accept as adequate to support a

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<sup>5</sup> Id.

<sup>6</sup> *Diamond Fuel Oil v. O'Neal*, 734 A.2d 1060, 1066 (Del. 1999); *Rhodes v. Diamond State Port Corp.*, Del. Supr., No. 79, 2010, Jacobs, J. (July 29, 2010) (citing *General Motors Corp. v. Freeman*, 164 A.2d 686, 688-89 (Del. 1960)).

<sup>7</sup> *Person-Gaines v. Pepco Holdings, Inc.*, 981 A.2d 1159, 1161 (Del. 2009).

conclusion.<sup>8</sup> This Court does not weigh the evidence, determine questions of credibility or make its own factual findings.<sup>9</sup> The standard of review for a decision of the Board is abuse of discretion.<sup>10</sup>

(8) In its decision denying Turner's petition for benefits, the Board concluded that Turner had failed to carry her burden of proof with respect to her entitlement to worker's compensation benefits.<sup>11</sup> We find upon careful review of this matter, utilizing the standard of review appropriate to this Court's review of a decision of the Board, that there was substantial record evidence supporting the Board's conclusion. As such, the decision of the Board denying Turner's worker's compensation claim must be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>8</sup> Id. (citing *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981)).

<sup>9</sup> Id. (citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66-67 (Del. 1965)).

<sup>10</sup> *Hoffecker v. Lexus of Wilmington*, Del. Supr., No. 523, 2011, Ridgely, J. (Feb. 1, 2012).

<sup>11</sup> To the extent that the Board utilized an incorrect standard in reaching that conclusion, we find any such error to be harmless. *Hoffecker v. Lexus of Wilmington*, Del. Supr., No. 523, 2011, Ridgely, J. (Feb. 1, 2012).